

House Study Bill 239

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON BODDICKER)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of adult day services,
2 providing for appropriations and penalties, and providing a
3 contingent effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 3013HC 80
6 pf/cl/14

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1 1 Section 1. NEW SECTION. 231D.1 DEFINITIONS.
1 2 For the purposes of this chapter, unless the context
1 3 otherwise requires:
1 4 1. "Adult day services", "adult day services program", or
1 5 "program" means an organized program providing a variety of
1 6 health, social, and related support services for sixteen hours
1 7 or less in a twenty-four-hour period to persons with a
1 8 functional impairment on a regularly scheduled, contractual
1 9 basis.
1 10 2. "Functional impairment" means a psychological,
1 11 cognitive, or physical impairment creating the inability to
1 12 perform personal and instrumental activities of daily living
1 13 and associated tasks necessitating some form of supervision or
1 14 assistance or both.
1 15 3. "Governmental unit" means the state, or any county,
1 16 municipality, or other political subdivision or any
1 17 department, division, board, or other agency of any of these
1 18 entities.
1 19 4. "Nursing care" means services which are required to be
1 20 provided only under the direction of a registered nurse or a
1 21 licensed practical nurse.
1 22 5. "Recognized accrediting entity" means a nationally
1 23 recognized accrediting entity that the department of elder
1 24 affairs, in cooperation with the department of inspections and
1 25 appeals, recognizes as having specific adult day services
1 26 program standards equivalent to the standards established by
1 27 the department of elder affairs, in cooperation with the
1 28 department of inspections and appeals, for adult day services.
1 29 6. "Social services" means services relating to the
1 30 psychological and social needs of the individual in adjusting
1 31 to participating in an adult day services program, and
1 32 minimizing the stress arising from that circumstance.
1 33 7. "Supervision" means direct oversight and inspection of
1 34 the act of accomplishing a function or activity.
1 35 Sec. 2. NEW SECTION. 231D.2 PURPOSE == RULES == SPECIAL
2 1 CLASSIFICATIONS.
2 2 1. The purpose of this chapter is to promote and encourage
2 3 adequate and safe care for adults with functional impairments.
2 4 2. The department of elder affairs, in cooperation with
2 5 the department of inspections and appeals, shall establish, by
2 6 rule in accordance with chapter 17A, a program for
2 7 certification and monitoring of and complaint investigations
2 8 related to adult day services programs. The department of
2 9 elder affairs, in cooperation with the department of
2 10 inspections and appeals, in establishing standards for adult
2 11 day services programs, may adopt by rule in accordance with
2 12 chapter 17A, nationally recognized standards for adult day
2 13 services programs. The rules shall include specification of
2 14 recognized accrediting entities. The rules and standards
2 15 adopted shall be formulated in consultation with affected
2 16 industry, professional, and consumer groups and shall be
2 17 designed to accomplish the purpose of this chapter.
2 18 3. The department of elder affairs, in cooperation with
2 19 the department of inspections and appeals, may establish by
2 20 administrative rule special classifications for adult day
2 21 services providers. The department of inspections and appeals

2 22 shall issue separate certificates for each special
2 23 classification for which a provider is certified.

2 24 Sec. 3. NEW SECTION. 231D.3 CERTIFICATION REQUIRED.

2 25 1. A person or governmental unit acting severally or
2 26 jointly with any other person or governmental unit shall not
2 27 establish or operate an adult day services program and shall
2 28 not represent an adult day services program to the public as
2 29 certified unless and until the program is certified pursuant
2 30 to this chapter. If an adult day services program is
2 31 voluntarily accredited by a recognized accrediting entity with
2 32 specific adult day services standards, the department of
2 33 inspections and appeals shall accept voluntary accreditation
2 34 as the basis for certification by the department. The owner
2 35 or manager of a certified adult day services program shall
3 1 comply with the rules adopted by the department of elder
3 2 affairs, in cooperation with the department of inspections and
3 3 appeals, for an adult day services program.

3 4 2. An adult day services program may provide any type of
3 5 adult day services for which the program is certified,
3 6 including any special classification of adult day services.
3 7 An adult day services program shall provide services and
3 8 supervision commensurate with the needs of the recipients. An
3 9 adult day services program shall not provide services to
3 10 individuals requiring a level or type of services for which
3 11 the program is not certified and services provided shall not
3 12 exceed the level or type of services for which the program is
3 13 certified.

3 14 3. An adult day services program that has been certified
3 15 by the department of inspections and appeals shall not alter
3 16 the program, operation, or adult day services for which the
3 17 program is certified in a manner that affects continuing
3 18 certification without prior approval of the department of
3 19 inspections and appeals. The department of inspections and
3 20 appeals shall specify, by rule, alterations that are subject
3 21 to prior approval.

3 22 4. A department, agency, or officer of this state or of
3 23 any political subdivision shall not pay or approve for payment
3 24 from public funds any amount to an adult day services program
3 25 for an actual or prospective recipient, unless the program
3 26 holds a current certificate issued by the department of
3 27 inspections and appeals and meets all current requirements for
3 28 certification.

3 29 5. An adult day services program shall not conduct or
3 30 operate another business or activity within the program
3 31 without the prior approval of the department of inspections
3 32 and appeals, if the business or activity serves primarily
3 33 nonrecipients of adult day services. The department of elder
3 34 affairs, in cooperation with the department of inspections and
3 35 appeals, and in accordance with chapter 17A, shall adopt rules
4 1 which establish criteria for approval of a business or
4 2 activity to be conducted or operated within the program. The
4 3 rules shall be developed in consultation with affected
4 4 industry, professional, and consumer groups.

4 5 Sec. 4. NEW SECTION. 231D.4 APPLICATION AND FEES.

4 6 1. Certificates for adult day services programs shall be
4 7 obtained from the department of inspections and appeals.
4 8 Applications shall be upon such forms and shall include such
4 9 information as the department of inspections and appeals may
4 10 reasonably require, which may include affirmative evidence of
4 11 compliance with applicable statutes and local ordinances.
4 12 Each application for certification shall be accompanied by the
4 13 appropriate fee, subject to refund to the applicant if the
4 14 certification is denied.

4 15 2. The department of elder affairs, in cooperation with
4 16 the department of inspections and appeals, shall establish
4 17 certification fees by rule in accordance with chapter 17A.
4 18 The department of inspections and appeals shall collect and
4 19 retain adult day services certification fees. The fees shall
4 20 be deposited in an adult day services program fund created in
4 21 the state treasury under the authority of the department of
4 22 inspections and appeals and are appropriated to the department
4 23 of inspections and appeals to carry out the purposes of this
4 24 chapter. Amounts deposited in the fund shall not be
4 25 transferred, used, obligated, appropriated, or otherwise
4 26 encumbered except as provided in this section.

4 27 Notwithstanding section 12C.7, subsection 2, interest or
4 28 earnings on moneys deposited into the fund shall be credited
4 29 to the fund. Notwithstanding section 8.33, amounts deposited
4 30 in the fund that remain unexpended or unencumbered at the
4 31 close of the fiscal year shall remain in the fund for
4 32 utilization as provided in this section for the following

4 33 fiscal year.

4 34 Sec. 5. NEW SECTION. 231D.5 DENIAL, SUSPENSION, OR
4 35 REVOCATION.

5 1 1. The department of inspections and appeals may deny,
5 2 suspend, or revoke certification if the department of
5 3 inspections and appeals finds that there has been a
5 4 substantial or repeated failure on the part of the adult day
5 5 services program to comply with this chapter or the rules or
5 6 minimum standards adopted pursuant to this chapter, or for any
5 7 of the following reasons:

5 8 a. Cruelty or indifference to adult day services program
5 9 service recipients.

5 10 b. Appropriation or conversion of the property of an adult
5 11 day services programs service recipient without the
5 12 recipient's written consent or the written consent of the
5 13 service recipient's legal guardian.

5 14 c. Permitting, aiding, or abetting the commission of any
5 15 illegal act in the adult day services program.

5 16 d. Obtaining or attempting to obtain or retain
5 17 certification by fraudulent means, misrepresentation, or by
5 18 submitting false information.

5 19 e. Habitual intoxication or addiction to the use of drugs
5 20 by the applicant, owner, manager, or supervisor of the adult
5 21 day services program.

5 22 f. Securing the devise or bequest of the property of a
5 23 recipient of services of an adult day services program by
5 24 undue influence.

5 25 g. Failure or neglect to maintain a continuing education
5 26 and training program for all personnel employed in the adult
5 27 day services program.

5 28 h. Founded dependent adult abuse as defined in section
5 29 235B.2.

5 30 i. For any other reason as provided by law or
5 31 administrative rule.

5 32 2. In the case of an application by an existing
5 33 certificate holder for a new or newly acquired adult day
5 34 services program, continuing or repeated failure of the
5 35 certificate holder to operate any previously certified adult
6 1 day services program in compliance with this chapter or of the
6 2 rules adopted pursuant to this chapter.

6 3 3. In the case of a certificate applicant or existing
6 4 certificate holder which is an entity other than an
6 5 individual, the department of inspections and appeals may
6 6 deny, suspend, or revoke a certificate if any individual who
6 7 is in a position of control or is an officer of the entity
6 8 engages in any act or omission proscribed by this section.

6 9 Sec. 6. NEW SECTION. 231D.6 NOTICE == APPEAL ==
6 10 EMERGENCY PROVISIONS.

6 11 1. The denial, suspension, or revocation of a certificate
6 12 shall be effected by delivering to the applicant or
6 13 certificate holder by restricted certified mail or by personal
6 14 service a notice setting forth the particular reasons for the
6 15 action. The denial, suspension, or revocation shall become
6 16 effective thirty days after the mailing or service of the
6 17 notice, unless the applicant or certificate holder, within the
6 18 thirty-day period, requests a hearing, in writing, of the
6 19 department of inspections and appeals, in which case the
6 20 notice shall be deemed to be suspended.

6 21 2. The denial, suspension, or revocation of a certificate
6 22 may be appealed in accordance with rules adopted by the
6 23 department of inspections and appeals.

6 24 3. When the department of inspections and appeals finds
6 25 that an immediate danger to the health or safety of recipients
6 26 of services from an adult day services program exists which
6 27 requires action on an emergency basis, the department of
6 28 inspections and appeals may direct the removal of all
6 29 recipients of services from an adult day services program and
6 30 suspend the certificate prior to a hearing.

6 31 Sec. 7. NEW SECTION. 231D.7 CONDITIONAL OPERATION.

6 32 The department of inspections and appeals may, as an
6 33 alternative to denial, suspension, or revocation of
6 34 certification under section 231D.5, conditionally issue or
6 35 continue certification dependent upon the performance by the
7 1 adult day services program of reasonable conditions within a
7 2 reasonable period of time as prescribed by the department of
7 3 inspections and appeals so as to permit the program to
7 4 commence or continue the operation of the program pending full
7 5 compliance with this chapter or the rules adopted pursuant to
7 6 this chapter. If the adult day services program does not make
7 7 diligent efforts to comply with the conditions prescribed, the
7 8 department of inspections and appeals may, under the

7 9 proceedings prescribed by this chapter, suspend or revoke the
7 10 certificate. An adult day services program shall not be
7 11 operated under conditional certification for more than one
7 12 year.

7 13 Sec. 8. NEW SECTION. 231D.8 DIRECTOR NOTIFIED OF
7 14 CASUALTIES.

7 15 The director of inspections and appeals shall be notified
7 16 within twenty-four hours, by the most expeditious means
7 17 available, of any accident causing substantial injury or
7 18 death, and any substantial fire or natural or other disaster
7 19 occurring at or near an adult day services program.

7 20 Sec. 9. NEW SECTION. 231D.9 COMPLAINTS AND
7 21 CONFIDENTIALITY.

7 22 1. A person with concerns regarding the operations or
7 23 service delivery of an adult day services program may file a
7 24 complaint with the department of inspections and appeals. The
7 25 name of the person who files a complaint with the department
7 26 of inspections and appeals and any personal identifying
7 27 information of the person or any recipient of program services
7 28 identified in the complaint shall be kept confidential and
7 29 shall not be subject to discovery, subpoena, or other means of
7 30 legal compulsion for its release to a person other than
7 31 employees of the department of inspections and appeals
7 32 involved in the investigation of the complaint.

7 33 2. The department of elder affairs, in cooperation with
7 34 the department of inspections and appeals, shall establish
7 35 procedures for the disposition of complaints received in
8 1 accordance with this section.

8 2 Sec. 10. NEW SECTION. 231D.10 PUBLIC DISCLOSURE OF
8 3 FINDINGS.

8 4 Following a monitoring evaluation or complaint
8 5 investigation of an adult day services program by the
8 6 department of inspections and appeals pursuant to this
8 7 chapter, the department's final findings with respect to
8 8 compliance by the adult day services program with requirements
8 9 for certification shall be made available to the public in a
8 10 readily available form and place. Other information relating
8 11 to an adult day services program that is obtained by the
8 12 department of inspections and appeals which does not
8 13 constitute the department's final findings from a monitoring
8 14 evaluation or complaint investigation of the adult day
8 15 services program shall not be made available to the public
8 16 except in proceedings involving the denial, suspension, or
8 17 revocation of a certificate under this chapter.

8 18 Sec. 11. NEW SECTION. 231D.11 PENALTIES.

8 19 1. A person establishing, conducting, managing, or
8 20 operating an adult day services program without a certificate
8 21 is guilty of a serious misdemeanor. Each day of continuing
8 22 violation after conviction or notice from the department of
8 23 inspections and appeals by certified mail of a violation shall
8 24 be considered a separate offense or chargeable offense. A
8 25 person establishing, conducting, managing, or operating an
8 26 adult day services program without a certificate may be
8 27 temporarily or permanently restrained by a court of competent
8 28 jurisdiction from such activity in an action brought by the
8 29 state.

8 30 2. A person who prevents or interferes with or attempts to
8 31 impede in any way any duly authorized representative of the
8 32 department of inspections and appeals in the lawful
8 33 enforcement of this chapter or of the rules adopted pursuant
8 34 to this chapter is guilty of a simple misdemeanor. As used in
8 35 this subsection, lawful enforcement includes but is not

9 1 limited to:
9 2 a. Contacting or interviewing any participant of an adult
9 3 day services program in private at any reasonable hour and
9 4 without advance notice.
9 5 b. Examining any relevant records of an adult day services
9 6 program.

9 7 c. Preserving evidence of any violation of this chapter or
9 8 of the rules adopted pursuant to this chapter.

9 9 3. A civil penalty, as established by rule, may apply in
9 10 any of the following situations:

9 11 a. Program noncompliance with one or more regulatory
9 12 requirements has caused or is likely to cause harm, serious
9 13 injury, threat, or death to a recipient of program services.

9 14 b. Program failure or refusal to comply with regulatory
9 15 requirements within prescribed time frames.

9 16 Sec. 12. NEW SECTION. 231D.12 RETALIATION BY AN ADULT
9 17 DAY SERVICES PROVIDER PROHIBITED.

9 18 1. An adult day services provider shall not discriminate
9 19 or retaliate in any way against a recipient, recipient's

9 20 family, or an employee of the program who has initiated or
9 21 participated in any proceeding authorized by this chapter. An
9 22 adult day services program that violates this section is
9 23 subject to a penalty as established by administrative rule, to
9 24 be assessed and collected by the department of inspections and
9 25 appeals and paid into the state treasury to be credited to the
9 26 general fund of the state, or to immediate revocation of the
9 27 program's certificate.

9 28 2. Any attempt to discharge a recipient from an adult day
9 29 services program by whom or upon whose behalf a complaint has
9 30 been submitted to the department of inspections and appeals
9 31 under section 231D.9, within ninety days after the filing of
9 32 the complaint or the conclusion of any proceeding resulting
9 33 from the complaint, shall raise a rebuttable presumption that
9 34 the action was taken by the program in retaliation for the
9 35 filing of the complaint, except in situations in which the
10 1 recipient is discharged due to changes in health status which
10 2 exceed the level of care offered by the adult day services
10 3 program.

10 4 Sec. 13. NEW SECTION. 231D.13 NURSING ASSISTANT AND
10 5 MEDICATION AIDE == CERTIFICATION.

10 6 The department of inspections and appeals, in cooperation
10 7 with other appropriate agencies, shall establish a procedure
10 8 to allow nursing assistants or medication aides to claim work
10 9 within adult day services programs as credit toward sustaining
10 10 the nursing assistant's or medication aide's certification.

10 11 Sec. 14. NEW SECTION. 231D.14 CRIMINAL RECORDS
10 12 INVESTIGATION CHECK.

10 13 An adult day services program shall comply with section
10 14 135C.33.

10 15 Sec. 15. NEW SECTION. 231D.15 FIRE AND SAFETY STANDARDS.

10 16 The state fire marshal shall adopt rules, in coordination
10 17 with the department of inspections and appeals, relating to
10 18 the certification and monitoring of the fire and safety
10 19 standards of adult day services programs.

10 20 Sec. 16. NEW SECTION. 231D.16 TRANSITION PROVISIONS.

10 21 Adult day services programs existing prior to July 1, 2003,
10 22 shall comply with this chapter by June 30, 2004.

10 23 Sec. 17. Section 100.1, subsection 6, Code 2003, is
10 24 amended to read as follows:

10 25 6. To adopt rules designating a fee to be assessed to each
10 26 building, structure, or facility for which a fire safety
10 27 inspection or plan review by the state fire marshal is
10 28 required ~~as a condition of licensure by law~~. The fee
10 29 designated by rule shall be set in an amount that is
10 30 reasonably related to the costs of conducting the applicable
10 31 inspection or plan review. The fees collected by the state
10 32 fire marshal shall be retained by the state fire marshal and
10 33 deposited in the general a separate fund of created in the
10 34 state treasury under the authority of the state fire marshal
10 35 and are appropriated to the state fire marshal to carry out

11 1 the purpose of this subsection. Amounts deposited in the fund
11 2 shall not be transferred, used, obligated, appropriated, or
11 3 otherwise encumbered, except as provided in this subsection.

11 4 Notwithstanding section 12C.7, subsection 2, interest or
11 5 earnings on moneys deposited in the fund shall be credited to
11 6 the fund. Notwithstanding section 8.33, amounts deposited in
11 7 the fund that remain unexpended or unencumbered at the close
11 8 of the fiscal year shall remain in the fund for utilization as
11 9 provided in this subsection for the following fiscal year.

11 10 Sec. 18. Section 135C.1, subsection 1, Code 2003, is
11 11 amended to read as follows:

11 12 1. "Adult day services" means adult day services as
11 13 defined in section ~~231.61~~ 231D.1 that are provided in a
11 14 licensed health care facility.

11 15 Sec. 19. Section 231C.2, Code 2003, is amended by adding
11 16 the following new subsection:

11 17 NEW SUBSECTION. 0A. "Adult day services" means adult day
11 18 services as defined in section 231D.1.

11 19 Sec. 20. IMPLEMENTATION == CONTINGENCY. This Act takes
11 20 effect only when the general assembly appropriates funding and
11 21 specifically states in the language of the appropriation that
11 22 the funding is sufficient, based upon an estimate on file with
11 23 the house of origin of the Act, for the implementation and
11 24 administration of the Act. The department of elder affairs
11 25 shall notify the Code editor when sufficient funds are
11 26 appropriated to implement and administer this Act.

11 27 Sec. 21. Section 231.61, Code 2003, is repealed.

11 28 EXPLANATION

11 29 This bill establishes regulatory provisions for adult day
11 30 services.

11 31 Currently, provisions relating to regulation of adult day
11 32 services are included in Code section 231.61, which is
11 33 repealed in the bill. Under that section, regulation of adult
11 34 day services consisted of development of a system of oversight
11 35 by affected state agencies, industry representatives, and
12 1 consumers under the department of elder affairs.
12 2 Under the bill, a new Code chapter, 231D, is created to
12 3 provide for the regulation of adult day services under the
12 4 department of elder affairs with the cooperation of the
12 5 department of inspections and appeals. The bill directs the
12 6 department of elder affairs, with the cooperation of the
12 7 department of inspections and appeals, to establish a program
12 8 for certification and monitoring of and complaint
12 9 investigations related to adult day services. The rules and
12 10 standards are to be formulated in consultation with affected
12 11 industry, professional, and consumer groups. Under the bill,
12 12 all adult day services programs are required to be certified
12 13 by the department of inspections and appeals. The bill
12 14 establishes application and fee requirements; provides a
12 15 procedure for denial, suspension, or revocation of
12 16 certification; provides for the director of inspections and
12 17 appeals to be notified of casualties relative to an adult day
12 18 services program; provides a complaint process; provides for
12 19 disclosure of final findings by the department of inspections
12 20 and appeals related to monitoring evaluations or complaint
12 21 investigations; provides penalties for noncompliance with
12 22 certification requirements and enforcement of the provisions
12 23 of the chapter; prohibits retaliation by a provider of adult
12 24 day services; provides for nursing assistants and medication
12 25 aides to claim work within adult day services programs as
12 26 credit toward certification; provides for fire and safety
12 27 standards; and provides transition provisions. The bill also
12 28 provides for contingent implementation of the bill.
12 29 LSB 3013HC 80
12 30 pf/cl/14